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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 07-CV-6013

In Regard to the Matter of:

Bayside State Prison
Litigation

Opinion and Report
of the
Special Master

WILLIAM FACCONA,

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * * *
WEDNESDAY, FEBRUARY 13, 2008
* * * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

MASTROIANNI & FORMAROLI, INC.
Certified Court Reporting & Videoconferencing
251 South White Horse Pike
Audubon, New Jersey 08106
856-546-1100

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Transcript of proceedings in the above
matter taken by Theresa O. Mastroianni, Certified
Court Reporter, license number 30X100085700, and
Notary Public of the State of New Jersey at the
United States District Court House, One Gerry Plaza,
Camden, New Jersey, 08102, commencing at 9:30 AM.

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1 JUDGE BISSELL: I now turn to the opinion
2 regarding William Faccone.

3 For that purpose we will reopen the
4 record for a separate transcript in Mr. William
5 Faccone's case under docket number 07-6013.

6 I note once again, as I think I should
7 at the head of every transcript, that I am issuing an
8 oral opinion pursuant to Civil Rule 52.1 to be
9 submitted to me for revision as that rule
10 contemplates. As finalized and filed this transcript
11 will constitute the "written report" required under
12 paragraph 7 of the Order of Reference to a Special
13 Master. I am abiding by the provisions set forth in
14 that Order of Reference and incorporating the
15 requirements of the Special Master Agreement
16 regarding the duties and powers of the Special
17 Master.

18 Furthermore, as the guiding principles
19 of law in this matter, I incorporate by reference the
20 prior jury instructions as set forth in the Walker
21 and Mejias charges which have been supplied to me, to
22 the extent applicable to the issues and proofs in the
23 case at hand.

24 As to William Faccone, he recounts a
25 beating at the transcript of January 29th, 2008,

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1 appearing at pages 196 through 200. But the
2 continuity of back pain which he ascribes to this
3 event without ever having gone to a doctor, either
4 before or after his release from incarceration,
5 together with an assertion that he takes regularly 15
6 Advils a day, is just not credible. It's an effort,
7 frankly, to exaggerate the permanency and severity of
8 his supposed injuries. Indeed, it casts a shadow
9 over the credibility and weight to be accorded to his
10 testimony as a whole.

11 He asserted a number of cuts on his
12 face as a result of this incident, none of which were
13 stitched. He's never said he had any cosmetic work
14 done. However, I did not detect any scarring on his
15 face and he was sitting right next to me, nor does
16 the record reflect that that was asserted or that my
17 attention was drawn to the same. I find it unlikely
18 that that would be so, if he were beaten as he
19 states.

20 He talks about having been beaten with
21 leaded gloves and large flashlights. However, I
22 found the testimony of Officer Roberts, appearing
23 (perhaps as well as elsewhere) at pages 124 through
24 126 of the transcript as credible when he states that
25 leaded gloves are not permitted in the units. Leaded

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1 gloves, presumably weighted, are not permitted in the
2 units and large flashlights are not carried into the
3 units.

4 He mentioned that there were one or
5 more flashlights available, my recollection is in
6 central control, for necessary use. But I find
7 Plaintiff's recounting of having been beaten with a
8 large flashlight is not credible.

9 There was an inconsistency between Mr.
10 Faccone's testimony here in court and his prior
11 answers to interrogatories and on deposition which,
12 although also somewhat time removed from the event,
13 were certainly closer to it than his day here in
14 court. His interrogatory answers had no mention
15 about any orange being thrown nor did it name Officer
16 Roberts by name. Indeed, the deposition stated that
17 Mr. Mitchell and not Mr. Roberts threw the orange.

18 There are discrepancies with regard to
19 the date of the visit by Ombudsman Quilles and
20 whether he did or did not show her his facial
21 injuries.

22 At the deposition he stated that the
23 assault was some two weeks after the lockdown started
24 rather than three to four days. Once again, one
25 might excuse the differences in recollection of that

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1 sort, but he was really quite insistent on that time
2 frame here.

3 Frankly, that had some significance
4 because through the testimony of Officer Roberts, it
5 was established that certain officers who visit a
6 unit such as that in which Mr. Faccone was housed
7 signed in and, indeed, signed in in red. And there
8 are no indications on the dates in question that
9 either Roberts or Mitchell had signed in to that
10 unit.

11 I do not find it credible that somehow
12 or other they would have snuck into that unit to
13 single out Mr. Faccone or to deal with what may have
14 been an incident in which they thought he was
15 involved without signing in. They risked more
16 dangers by doing that than they could possibly solve.

17 Accordingly, there is a real doubt cast
18 upon whether either Roberts or Mitchell was even
19 there at the incident. The transcript of January
20 29th at pages 118 through 122 is among the sources of
21 the conclusion.

22 I also observed the demeanor of the
23 witnesses before me. I'm not saying that Mr. Faccone
24 just oozed the aura of a liar, but as I said there
25 are some things in his testimony which I do not find

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1 credible.

2 I felt that Mr. Roberts demeanor on the
3 witness stand was straightforward, but at the same
4 time he was not defensive and did not have any of
5 that sort of aura of police infallibility or
6 my-way-or-the-highway sort of approach that I have
7 seen all too often in the past, but not through him.
8 So I found his testimony credible on the significant
9 events. I also considered the testimony of Mr.
10 Capiello, through his deposition, introduced as
11 Exhibit P-15. While he supports the testimony of the
12 Plaintiff regarding the presence of Mitchell and
13 Roberts and the use of flashlights, that evidence has
14 been impeached for the reasons set forth above. A
15 supposedly contemporaneous journal was referred to in
16 the record but not introduced into evidence as such;
17 therefore, that added little to the evidence
18 presented by Plaintiff.

19 Finally, although not every item of
20 evidence has been discussed in this opinion/report,
21 all evidence presented to the Special Master was
22 reviewed and considered.

23 Accordingly, my report as generated
24 here is that Mr. Faccone has failed to establish a
25 cause of action for a violation of any of his Eighth

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1 Amendment rights. I recommend in this report that
2 the District Court enter a verdict of no cause for
3 action.
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C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and
Certified Shorthand Reporter of the State of New
Jersey, do hereby certify that the foregoing is a
true and accurate transcript of the testimony as
taken stenographically by and before me at the time,
place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a
relative nor employee nor attorney nor counsel of any
of the parties to this action, and that I am neither
a relative nor employee of such attorney or counsel,
and that I am not financially interested in the
action.

Theresa O. Mastroianni

Theresa O. Mastroianni, C.S.R.

Notary Public, State of New Jersey

My Commission Expires May 5, 2010

Certificate No. X10857

Date: February 19, 2008

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